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DAVID SCHULHOF

FILED
SAN MATEO COUNTY

MAY 6 2018

Clerk of the Superior Court

By DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

UNLIMITED JURISDICTION

CIV 472733

CIV 4

DAVID SCHULHOF, an individual,

No.

Plaintiff,

COMPLAINT FOR DAMAGES

v.

SHARON J. CLAYTON, an individual;
ANTHONY MOORE, an individual; and DOES
1 through 40, inclusive,

Defendants.

Plaintiff David Schulhof (hereinafter "Schulhof") alleges as follows:

GENERAL ALLEGATIONS

1. David Schulhof is, and at all times herein mentioned was, an individual residing in the State of California, County of San Mateo.

2. Schulhof is informed and believes and on that basis alleges that Defendant Sharon J. Clayton (hereinafter "Clayton") is, and at all relevant times herein mentioned was, an individual residing in the State of California, County of Los Angeles.

3. Schulhof is informed and believes and on that basis alleges that Defendant Anthony Moore (hereinafter "Moore") is, and at all relevant times herein mentioned was, an individual residing in the State of California, County of Los Angeles.

ORIGINAL

1 4. Schulhof is not presently aware of the true names and capacities of defendants
2 sued herein as Does 1 through 40, inclusive. When the true names and capacities of the Doe
3 defendants are ascertained, Schulhof will amend this complaint to allege and include that
4 information.

5 5. Schulhof is informed and believes, and on that basis alleges, that each of the
6 defendants was or is the agent, representative, co-conspirator and/or employee of each other
7 defendants and, in doing the things alleged in this complaint, was acting within the normal course
8 and scope of that relationship. Schulhof is further informed and believes, and on that basis
9 alleges, that each of the defendants ratified each of the acts of each other defendant complained
10 of herein. As a result of such relationship or otherwise, each of the defendants was and is
11 responsible in some manner for the occurrences and damages described in this complaint.

12 **BACKGROUND ALLEGATIONS**

13 6. In or around Spring 1999, Schulhof founded and became the President and Chief
14 Executive Officer of nicheMusic.com Inc., doing business as 75 Ark Entertainment (hereinafter
15 "75 Ark"), a Delaware corporation qualified to do business in the State of California and
16 conducting its business in California.

17 7. At all relevant times herein mentioned, 75 Ark was, and is, an entertainment group
18 that later became a conventional independent record label focusing mainly on releasing Hip-Hop,
19 DJ Culture, and Turntablism products.

20 **SCHULHOF AND 75 ARK'S RELATIONSHIP WITH** 21 **CLAYTON AND MOORE**

22 8. Schulhof is informed and believes and on that basis alleges that Clayton is, and at
23 all relevant times herein mentioned was, a co-founder and Chief Executive Officer of Moore,
24 Clayton & Co., Inc. (hereinafter "MCC, Inc."), which is, and at all relevant times herein
25 mentioned was, among other things, a global private equity merchant bank that provides strategic
26 and financial advisory and investment services to clients. Schulhof is further informed and
27 believes and on that basis alleges that Clayton is, and at all relevant times herein mentioned also
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1 was, the Chairman of the Management Board of MCC Global NV, a European company that
2 Schulhof is informed and believes and on that basis alleges currently owns MCC, Inc.

3 9. Schulhof is further informed and believes and on that basis alleges that Moore is,
4 and at all relevant times herein mentioned was, a co-founder and Executive Chairman of MCC,
5 Inc. as well as the Chairman of MCC Global NV's Supervisory Board.

6 10. In or around Fall 2000, Clayton and Moore each personally invested in 75 Ark.

7 11. Subsequently, when 75 Ark was unsuccessful in building its business plan, 75 Ark
8 tailored its expenses and explored the possibility of merging with another company or
9 recapitalizing 75 Ark and re-building it with an amended business model or plan.

10 12. On or about October 2, 2000, 75 Ark entered into an agreement with Teren D.
11 Jones, individually and doing business as Happy Hemp Music (hereinafter "Jones"), for an
12 exclusive worldwide right to manufacture, distribute, and exploit Jones' album. In return, 75
13 Ark agreed, among other things, to issue nicheMusic.com stock to Jones and pay him record and
14 publishing royalties.

15 13. On or about September 23, 2003, Jones commenced a lawsuit for breach of
16 contract and copyright infringement against various defendants, including Schulhof and 75 Ark, in
17 the U.S. District Court for the Southern District of New York captioned "Jones et al. v.
18 nicheMusic.com, Inc., et al., 03-CV-7452" (hereinafter "The Jones Lawsuit").

19 **CLAYTON AND MOORE'S AGREEMENT WITH SCHULHOF**

20 14. In or around late 2005 to early 2006, 75 Ark's corporate status was suspended for
21 failure to file tax returns. At Clayton's insistence, and based upon her promise, representation,
22 and reassurance of reimbursement during a telephone conversation in or around late 2005 or early
23 2006, Schulhof attempted to reinstate 75 Ark's active corporate status by incurring \$15,000 in
24 charges to his personal accountant related to accounting services, which amount is now long
25 overdue.

26 15. In or around mid-2006, after a series of negotiations between the parties to The
27 Jones Lawsuit, the Court in that matter recommended that both parties agree to a settlement
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1 wherein 75 Ark would pay to Jones the sum of \$75,000.

2 16. Beginning in or around mid-2006 and continuing thereafter up to and including in
3 or about February 2007, Clayton and Moore, and Does 1-40, and each of them, repeatedly made
4 oral promises to Schulhof in San Mateo County, California, and Clayton and Moore, and Does 1-
5 40, and each of them sent written confirmations and promises to Schulhof in San Mateo County,
6 California that Clayton and Moore would pay, and were committed to paying, the \$75,000 sum to
7 settle The Jones Lawsuit as follows:

- 8 a. On or around September 27, 2006, Schulhof advised Clayton via electronic mail that
9 75 Ark's options were to either settle for \$75,000 or file for bankruptcy and requested
10 that Clayton "reconfirm that MCC will support this settlement." Attached hereto as
11 **Exhibit A** and incorporated herein by reference is a true and correct copy of said
12 electronic mail.
- 13 b. In response, Clayton verbally indicated that she and Moore did not want 75 Ark to file
14 for bankruptcy under any circumstances. Furthermore, Clayton verbally reassured,
15 promised, and represented to Schulhof beginning in or around mid-2006 to late 2006
16 that she was in contact with Moore about their agreement to pay the \$75,000
17 settlement of The Jones Lawsuit, that MCC, Inc. had \$16 million in escrow as a result
18 of a reverse merger, fund raising, and public listing in Frankfurt, Germany from which
19 she and Moore could fund said settlement, and that in any event, Clayton and Moore
20 would obtain the funds with which to pay said settlement from some source.
- 21 c. Based on Clayton and Moore's promises to pay \$75,000 to settle The Jones Lawsuit,
22 Schulhof agreed not to file a bankruptcy petition on behalf of 75 Ark and himself, and
23 agreed to settle The Jones Lawsuit for, and personally guarantee payment of, the
24 \$75,000 in or about October, 2006.
- 25 d. Based on Clayton and Moore's reassurances, promises, and representations that they
26 would fund the \$75,000 settlement of The Jones Lawsuit, Schulhof further agreed with
27 Jones to fund the settlement by December 21, 2006, which deadline was continued to
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- December 31, 2006 due to a death in Jones' counsel's family.
- e. In response to a December 6, 2006 electronic mail from Schulhof reminding Clayton of the deadline to pay the \$75,000 settlement, Clayton sent an electronic mail on the same date indicating that "[w]e are focused on" paying said settlement and sent a courtesy copy of said electronic mail to Moore to refresh his memory of their agreement to pay said settlement. Attached hereto as **Exhibit B** and incorporated herein by reference is a true and correct copy of said electronic mail exchange.
 - f. On or around December 21, 2006, Clayton sent Schulhof an electronic mail with a courtesy copy to Moore asking for the last possible date in which to pay the \$75,000 settlement because "cash is the issue."
 - g. Schulhof responded via electronic mail on or around December 21, 2006 that he could potentially request an extension of time and asked for a date from Clayton, to which she responded that the end of January, 2007 "would be optimal because although we've had a first close[,] cash will not be in for a few weeks ... and we need to ensure that we don't let you down!" Attached hereto as **Exhibit C** and incorporated herein by reference is a true and correct copy of said electronic mail.
 - h. On or around December 26, 2006, Moore sent Schulhof and Clayton a message via electronic mail containing language related to, among other things, the manner in which Clayton and Moore intended to fund the settlement of The Jones Lawsuit. Moore provided Schulhof with this email so that Schulhof could convince the Court in The Jones Lawsuit that Schulhof intended to abide by the settlement and was waiting funding. Attached hereto as **Exhibit D** and incorporated herein by reference is a true and correct copy of said electronic mail.
 - i. The deadline in which Schulhof must pay the \$75,000 settlement was re-scheduled to January 31, 2007.
 - j. On or around January 29, 2007, in response to an electronic mail from Schulhof on the same day requesting confirmation that Clayton and Moore would wire the money on

- 1 January 31, 2007, Clayton replied via electronic mail that she had impressed upon
2 Moore of the urgency of the matter and stated that "we will make sure we take care of
3 this as we promised so long ago!" Attached hereto as **Exhibit E** and incorporated
4 herein by reference is a true and correct copy of said electronic mail.
- 5 k. On or around January 31, 2007, Clayton sent Schulhof an electronic mail expressing
6 her distress that Moore was unable to wire the settlement money as promised "after
7 tony ... clearly told me I didn't have to worry about this..that [sic] they were going to
8 make sure it happened." Clayton further extended an offer "to help with anything I
9 can do personally." Attached hereto as **Exhibit F** and incorporated herein by reference
10 is a true and correct copy of said electronic mail.
- 11 l. In or around early February, 2007, in an exchange of electronic mail between Schulhof
12 and Clayton and/or Moore, Schulhof stated that if the money is available by February
13 5, 2007, then the settlement with Jones would proceed. Clayton and Moore reiterated
14 their promise, representation, and reassurances to Schulhof that they will reimburse
15 him any amount he borrows, including interest, in order to pay the \$75,000 settlement
16 with Jones. Attached hereto as **Exhibit G** and incorporated herein by reference is a
17 true and correct copy of said electronic mail.
- 18 m. On or around February 5, 2007, Schulhof advised Clayton and Moore via electronic
19 mail that he could potentially obtain a loan at very high interest rates or file for
20 personal bankruptcy. Schulhof further indicated that he would like to file for
21 bankruptcy as soon as possible in order to protect himself. Clayton, with a carbon
22 copy to Moore, responded via electronic mail that she and Moore would reimburse
23 Schulhof the amount that the latter borrows for the settlement because Clayton and
24 Moore expected to have funds available from escrow by the end of that week.
25 Attached hereto as **Exhibit H** and incorporated herein by reference is a true and
26 correct copy of said electronic mail.
- 27 n. On or around February 6, 2007, Clayton, with a carbon copy to Moore, advised
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- 1 Schulhof via electronic mail that Schulhof's best bet was to obtain a loan and that
2 Clayton and Moore would "back" Schulhof so that he could avoid personal liability.
3 Clayton further asked Schulhof what she and Moore needed "to do to back this
4 repayment—even if it's a loan shark deal!" Attached hereto as **Exhibit I** and
5 incorporated herein by reference is a true and correct copy of said electronic mail.
- 6 o. Later that day, Moore wrote to Schulhof via electronic mail and advised the latter that
7 he and Clayton were not in a position to help as they had no access to cash at that time,
8 that their guarantees and stock pledges were not being accepted, and that they expected
9 to be able to pay the settlement by the end of February, 2007. Attached hereto as
10 **Exhibit J** and incorporated herein by reference is a true and correct copy of said
11 electronic mail.
- 12 p. Later still that day, Schulhof advised Clayton and Moore through electronic mail that
13 Schulhof was able to borrow \$75,000 at 20% interest for 60 days secured by a deed of
14 trust on his personal residence and had obtained a \$10,000 cash advance on his credit
15 cards in order to fund the \$75,000 settlement with Jones and pay Schulhof's attorney.
16 Attached hereto as **Exhibit K** and incorporated herein by reference is a true and
17 correct copy of said electronic mail.
- 18 q. In response, Moore sent Schulhof an electronic mail with a courtesy copy to Clayton
19 that the "60 days is obviously helpful" and advised Schulhof that he and Clayton "will
20 fix our own situation and then we'll talk about how to unravel yours." Attached hereto
21 as **Exhibit L** and incorporated herein by reference is a true and correct copy of said
22 electronic mail.
- 23 r. On or around February 8, 2007, Clayton responded via electronic mail with a courtesy
24 copy to Moore that she and Moore promised "to make it up" to Schulhof and that they
25 will "do everything" they could. Attached hereto as **Exhibit M** and incorporated
26 herein by reference is a true and correct copy of said electronic mail.
- 27 17. Based on Clayton and Moore's repeated reassurances, promises, and
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1 representations of reimbursement, Schulhof eventually borrowed \$75,000 from a private party in
2 order to fund the \$75,000 settlement of The Jones Lawsuit. He further obtained another loan for
3 another \$75,000 as well as used \$25,000 from the proceeds from the sale of his residence in order
4 to pay off the principal and interest on the original \$75,000 loan. In total, Schulhof incurred a
5 debt of at least \$135,000 in order to fund The Jones Lawsuit and pursuant to the reassurances,
6 promises, and representations of reimbursement by Clayton and Moore.

7 18. To date, Clayton and Moore, and Does 1-40, and each of them have failed to
8 reimburse Schulhof any and all costs associated with his loans, which currently total \$135,000, in
9 spite of Schulhof's repeated demands for the same. Furthermore, said defendants have yet to
10 reimburse Schulhof for the \$15,000 in charges for accounting services he incurred in his attempt
11 to reinstate 75 Ark's corporate status.

12 **FIRST CAUSE OF ACTION**
13 **(Breach of Contract)**

14 19. Schulhof alleges and incorporates herein by reference Paragraphs 1 through 18,
15 inclusive, of the complaint as though fully set forth herein.

16 20. As set forth above, Schulhof alleges that Clayton, Moore, and Does 1-40, and each
17 of them, made repeated written and verbal promises, representations, and reassurances initially to
18 pay or fund the \$75,000 settlement of The Jones Lawsuit and subsequently to reimburse Schulhof
19 of all sums related to the principal, interest, and any and all other costs Schulhof incurred in order
20 to pay the \$75,000 settlement. Schulhof further alleges that Clayton, Moore, and Does 1-40, and
21 each of them, made a verbal promise to reimburse Schulhof of all sums he incurred associated
22 with Schulhof's attempts to reinstate 75 Ark's active corporate status.

23 21. Schulhof duly performed all conditions, covenants, and promises required to be
24 performed on his part in accordance with the terms and conditions of the agreement, save and
25 except for those obligations that have been excused or waived by Defendants and Does 1-40's
26 joint and several acts and/or omissions. At the urging and insistence of Clayton, Moore, and Does
27 1-40, and each of them, and based on their promises, representations, and reassurances, Schulhof:

28 a. Agreed to the \$75,000 settlement with Jones rather than filing for bankruptcy;

- 1 b. Incurred at least \$135,000 in principal and associated costs in connection with a loan
2 Schulhof acquired in order to pay the \$75,000 settlement with Jones;
3 c. Incurred at least \$15,000 in expenses related to accounting services in Schulhof's
4 attempt to reinstate 75 Ark's active corporate status.

5 22. Schulhof is informed and believes, and on that basis alleges, that Clayton, Moore,
6 and Does 1-40, and each of them, breached the agreements by, among other things:

- 7 a. Failing and refusing to timely pay and fund the \$75,000 settlement with Jones;
8 b. Failing and refusing to timely pay and reimburse Schulhof the \$135,000 principal and
9 associated costs Schulhof incurred in connection with the loans he arranged in order to
10 fund said settlement agreement; and
11 c. Failing and refusing to timely pay and reimburse Schulhof for the \$15,000 he incurred
12 to his personal accountant for accounting services, upon said defendants' promise,
13 representation, and reassurance of reimbursement, in Schulhof's attempts to reinstate
14 75 Ark's active corporate status.

15 23. As a proximate and legal result of the contractual breach by Clayton, Moore, and
16 Does 1-40, and each of them, Schulhof has suffered damages in an amount to be proven at trial,
17 but believed to be in excess of the jurisdictional minimum of the Court together with accrued and
18 unpaid interest thereon at the legal rate. Schulhof will seek leave to amend this complaint to
19 allege the precise amount of such damage when the same has been ascertained.

20 WHEREFORE, Schulhof prays for relief as hereinafter set forth.

21 **SECOND CAUSE OF ACTION**
22 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

23 24. Schulhof alleges and incorporates herein by reference Paragraphs 1 through 23
24 inclusive, of the complaint as though fully set forth herein.

25 25. Implied in the agreements between Schulhof and Clayton, Moore, and Does 1-40,
26 and each of them is a covenant of good faith and fair dealing wherein Clayton, Moore, and Does
27 1-40, and each of them, agreed that no one would do any acts which would have the effect of
28 frustrating or preventing any party's enjoyment of the benefits associated with the fact that

1 Schulhof was, and would be, entitled to \$75,000 to fund his and 75 Ark's settlement agreement
2 with Jones, that Schulhof was, and would be, entitled to reimbursement of at least \$135,000 in
3 principal and associated costs Schulhof incurred in loans in order to fund said settlement
4 agreement when said defendants failed to do so as originally agreed upon, and that Schulhof was,
5 and would be, entitled to reimbursement of at least \$15,000 in charges he incurred for accounting
6 services related to said defendants' insistence that Schulhof arrange for the immediate
7 reinstatement of 75 Ark's active corporate status.

8 26. Clayton, Moore, and Does 1-40, and each of them, breached the covenant of good
9 faith and fair dealing by, among other things:

- 10 a. Failing and refusing to timely pay and fund the \$75,000 settlement agreement between
11 Schulhof and 75 Ark on the one hand and Jones on the other;
12 b. Failing and refusing to timely pay and reimburse Schulhof at least \$135,000 in
13 principal and associated costs Schulhof incurred in connection with the loans he
14 arranged in order to fund the \$75,000 settlement with Jones; and
15 c. Failing and refusing to timely pay and reimburse Schulhof at least \$15,000 he incurred
16 for accounting services in his attempts to reinstate 75 Ark's active corporate status at
17 said defendants' insistence and request.

18 27. Clayton, Moore, and Does 1-40, and each of them, were in a superior position with
19 respect to, among other things, controlling their business and financial affairs. Schulhof was
20 particularly vulnerable in that he placed substantial trust in the representations made by said
21 defendants when entering into the agreements with said defendants, who persuaded and induced
22 Schulhof to refrain from filing a bankruptcy petition, agree to a \$75,000 settlement with Jones,
23 incur costs associated with loans he obtained in order to fund the \$75,000 settlement agreement
24 with Jones, and incur costs for accounting services at said defendants' insistence and request that
25 75 Ark's active corporate status be reinstated.

26 28. As a direct and proximate result of Clayton, Moore, and Does 1-40's, and each of
27 their breach of the covenant of good faith and fair dealing, Schulhof has suffered damages in an
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1 amount to be proven at trial, but believed to be in excess of the jurisdictional minimum of the
2 Court together with accrued and unpaid interest thereon at the legal rate. Schulhof will seek leave
3 to amend this complaint to allege the precise amount of such damage when the same has been
4 ascertained.

5 WHEREFORE, Schulhof prays for relief as hereinafter set forth.

6 **THIRD CAUSE OF ACTION**
7 **(Promissory Estoppel as Substitute for Consideration)**

8 29. Schulhof alleges and incorporates herein by reference Paragraphs 1 through 28
9 inclusive, of the complaint as though fully set forth herein.

10 30. Clayton, Moore, and Does 1-40, and each of them, promised: 1) beginning on or
11 about mid-2006, that Schulhof was, and would be, entitled to \$75,000 to fund his and 75 Ark's
12 settlement agreement with Jones; 2) in or about February, 2007 that Schulhof was, and would be,
13 entitled to reimbursement of at least \$135,000 in principal and associated costs Schulhof incurred
14 in connection with the loans he obtained in order to fund said settlement agreement when said
15 defendants failed to timely do so; and 3) in or about early 2005 to late 2006, that Schulhof was,
16 and would be, entitled to reimbursement of at least \$15,000 in charges he incurred for accounting
17 services related to Schulhof's attempts to reinstate 75 Ark's active corporate status upon said
18 defendants' promises of reimbursement.

19 31. In so doing, said defendants knew or should have known that Schulhof would be
20 reasonably induced to rely on said defendants' promises, reassurances, and representations by:

- 21 a. Agreeing to the \$75,000 settlement with Jones rather than filing for bankruptcy;
- 22 b. Incurring at least \$135,000 in principal and associated costs in connection with the
23 loans Schulhof acquired in order to pay the \$75,000 settlement with Jones; and
- 24 c. Incurring at least \$15,000 in charges related to accounting services in his attempts to
25 reinstate 75 Ark active corporate status.

26 32. Schulhof reasonably relied on said defendants' promises, reassurances, and
27 representations and was induced to:

- 28 a. Agreeing to settle The Jones Lawsuit for \$75,000 rather than filing for bankruptcy;

1 75 Ark active and in operation.

2 39. Clayton, Moore, and Does 1-40, and each of them, have been enriched by virtue of
3 Schulhof's incurring and expending at least \$150,000 to fund the settlement of The Jones Lawsuit
4 and to keep 75 Ark active and in operation for the benefit of Clayton, Moore, and Does 1-40. If
5 judgment is not awarded to Schulhof for incurring and expending said expenses, then Clayton,
6 Moore, and Does 1-40, and each of them, will be unjustly enriched.

7 WHEREFORE, Schulhof prays for relief as hereinafter set forth.

8 WHEREFORE, Schulhof prays for judgment as follows:

9 **PRAYER**

10 1. On the **First Cause of Action:**

- 11 a. Damages in the principal sum to be determined at the time of trial but in a sum no less
12 than the jurisdictional minimum of the Court;
13 b. Interest thereon at the legal rate from the date of breach, until paid;
14 c. Attorney's fees;

15 2. On the **Second Cause of Action:**

- 16 a. Damages in the principal sum to be determined at the time of trial but in a sum no less
17 than the jurisdictional minimum of the Court;
18 b. Interest thereon at the legal rate from the date of breach, until paid;

19 3. On the **Third Cause of Action:**

- 20 a. Damages in the principal sum to be determined at the time of trial but in a sum no less
21 than the jurisdictional minimum of the Court;
22 b. Interest thereon at the legal rate from the date of breach, until paid;

23 4. On the **Fourth Cause of Action:**

- 24 a. Damages in the amount of at least \$150,000, together with interest thereon at the legal
25 rate;

26 5. On **All Causes of Action:**

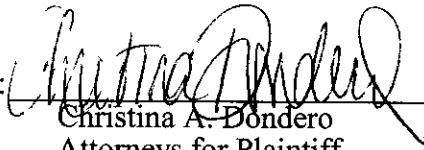
- 27 a. For attorneys' fees;
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- b. For costs of suit and expenses incurred herein; and
- c. For such other and further relief as the Court may deem just and proper.

DATED: May 7, 2008

NIESAR & WHYTE LLP

By: 
Christina A. Dondero
Attorneys for Plaintiff,
David Schulhof



EXHIBIT

A



EXHIBIT

A

From: David Schulhof [david@bettermills.com]
Sent: Wednesday, September 27, 2006 12:03 PM
To: 'Sharon Clayton'
Subject: NICHEMUSIC
Importance: High

Hi Sharon

I have some good news regarding the artist's law suits against nichemusic

Just to refresh your memory on this, the company owed back royalties to one of its main artists and had an ongoing suit which prevented us from operating fully. This affected our ability to sell product to distributors, as they would also be liable.

I had suggested to you last year that the high end figure for this was \$150,000 each for two artists. We have been under suit by one, for 200k, and they had not been willing to have more reasonable number for the last two years plus

Well, the parties have been in negotiations with the overview of a federal judge- as this is in a nyc federal court!

A number has been reached which while not what I would like, is reasonable. The judge is yelling at both parties to accept this offer

The amount needed to make this nightmare go away is \$75,000. For this amount of money, the company can free itself from this last hurdle, and be out from under this terrible problem. Chuck and I could then work on the rest of what's needed, and I would keep the company going with new projects as well as the old ones

The only other option is for me to tell them to go to hell and put the company in bankruptcy. This would also cost money and take time, and still not fully protect us. I do not like this option, I have never done a BK, and would rather pay off this debt

They won't accept a long term payout, but I am trying to get as much time as possible. I am thinking the judge and them will agree to 90 days

This has been a very ugly, worrisome, and resource draining suit. About half our cash flow and most of my mind frame is consumed with this. The activity around it in the last couple months has taken a lot of my time. This going away would be a new dawn for me and ark. Right now it's a hell.

What I need from you is to reconfirm that MCC will support this settlement. I am happy to put you in touch with whomever you want to confirm what ever arrangements etc

I hope you look at this as huge progress, I do. But if we can't settle now, I am really afraid for what that would mean all around. They have pulled out ALL the stops, and it has cost a lot to defend this case, the outlook for a trial and more, well you can imagine the cost and wasted time. I can't even think about

Please let me know what additional information you need and your confirmation of my plan and MCC's support

Thank you
Regards,
David Schulhof

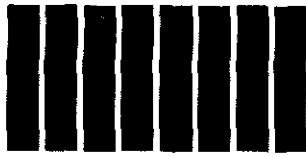


EXHIBIT B

B



EXHIBIT B

From: Sharon Clayton [SClayton@mccglobal.com]
Sent: Wednesday, December 06, 2006 10:07 AM
To: david@bettymills.com
Cc: Coles Brewer, Sohinaz Sotoudeh; Tony Moore, Ken Denos
Subject: Re. 75 Ark Settlement

Congratulations! Very exciting! We are focused on this and I've copied tony and ken so that they will recall our agreement which started way back in april on this subject!

----- Original Message -----

From: David Schulhof <david@bettymills.com>
To: Sharon Clayton
Cc: Coles Brewer; Sohinaz Sotoudeh
Sent: Wed Dec 06 10:02:07 2006
Subject: 75 Ark Settlement

Hi Sharon

I hope all is well I sure have had a big week already.

My wife and I had a baby girl on Monday evening! Both are doing well and I enclosed a picture

I will be working from home on a limited basis for the next week, but available for calls and checking email.

As much as I would like to not work at all, I do have matters that I will be continuing to manage.

The biggest of course is the final settlement for Ark and moving forward with our plans for the business

I have Jeff and Chuck working on business plans for January, and also have some additional business lined up to help pay the bills

As we spoke about last month, the timing for having to pay the settlement is approaching. The date the court mandated was 90days from court agreement, on Dec 21. That has been extended to give us until the end of December 31 to have money to the artist's lawyer

*****It is paramount that we make the payment no later then end of December*****

I cant stress this enough-

I would like to have payments made directly to the plaintiff counsel and our law firm if possible Out of the 100k allocated, we will need \$75,000 for plaintiff per the settlement, \$10,000 for our attorney bill (this is a negotiated amount to finish) – the balance to ark for back bills for work related to Retoring Corporation I have paid some of this from last year's work, but much still due

I am very much looking forward to build a new 75Ark business starting in January- as well as moving forward to capture our tax loss and tap that for MCC.

Should we schedule a call for later this week to discuss details regarding above?

Regards,

David Schulhof

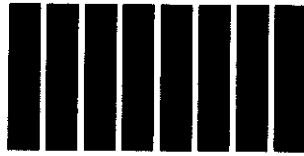


EXHIBIT C

C

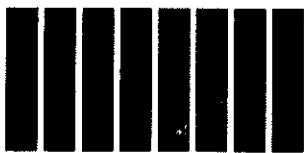


EXHIBIT C

From: Tony Moore [TMoore@mccglobal.com]
Sent: Thursday, December 21, 2006 9 59 AM
To: Sharon Clayton, david@bettymills.com, Sohinaz Sotoudeh
Cc: Coles Brewer, Ken Denos
Subject: Re 75 Ark Settlement

Jan 31st is what we can programme but we would try to do it before
TM

----- Original Message -----

From: Sharon Clayton
To: 'david@bettymills.com' <david@bettymills.com>, Sohinaz Sotoudeh
Cc: Coles Brewer; Tony Moore; Ken Denos
Sent: Thu Dec 21 09:37:35 2006
Subject: Re 75 Ark Settlement

You didn't tell me that was an option before and we've been stressing to get this to you! End of Jan would be optimal because although we've had a first close the cash will not be in for a few weeks from what Tony tells me and we need to ensure that we don't let you down!

----- Original Message -----

From: David S Schulhof <david@bettymills.com>
To: Sharon Clayton, Sohinaz Sotoudeh
Cc: Coles Brewer, Tony Moore, Ken Denos
Sent: Thu Dec 21 09:16:33 2006
Subject: Re 75 Ark Settlement

I can ask for an extension, until when do we need?



EXHIBIT D

D



EXHIBIT D

From: Tony Moore [TMoore@mccglobal.com]
Sent: Tuesday, December 26, 2006 7:45 AM
To: David Schulhof, Sharon Clayton, Sohinaz Sotoudeh
Cc: Coles Brewer, Ken Denos
Subject: RE: 75 Ark Settlement

David, please use the following email to support the fact that you will be receiving the necessary funding from Moore Clayton & Co Inc., (MCC) but that it has been delayed through circumstances beyond your's and MCC's control

MCC has indeed committed to fund David Schulhof in the amount of \$75,000 in order that he may settle his financial obligations related to 75 Ark. Such funding was contingent on MCC completing a listing on the Frankfurt Stock Exchange and an associated \$25 million financing. It had been anticipated that these transactions would be closed by end- October 2006. However, delays in the approval of the listing prospectus by the German and Dutch regulatory authorities and a consequent delay in completing the fund raise meant that we were not able to fund Mr Schulhof in the stipulated timeframe.

With the listing prospectus close to approval and the initial part of the fund raise complete, we anticipate being in a position to transfer \$75,000 to Mr Schulhof by Jan 31st, 2007

We regret these delays but have had little influence over the speed with which the various regulatory bodies have been able to process the comprehensive documentation related to the transaction in hand. The status of the transaction can be reviewed on the IFEX Group website at www.ifexgroup.com. IFEX is the company with which MCC is merging. IFEX will change it's name to MCC Global on completion of the transaction.

I would be happy to provide any additional and relevant information

TM



EXHIBIT

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EXHIBIT

E

From: Sharon Clayton [mailto:SCLayton@mccglobal.com]
Sent: Monday, January 29, 2007 10:42 AM
To: Coles Brewer, Sohinaz Sotoudeh; david@bettymills.com
Cc: Ken Denos, Tony Moore
Subject: RE: 75ark/nichemusic settlement

i've written to tony and ken and they know the urgency. i'm under water thru wed as coles says but we will make sure we take care of this as we promised so long ago!



EXHIBIT F

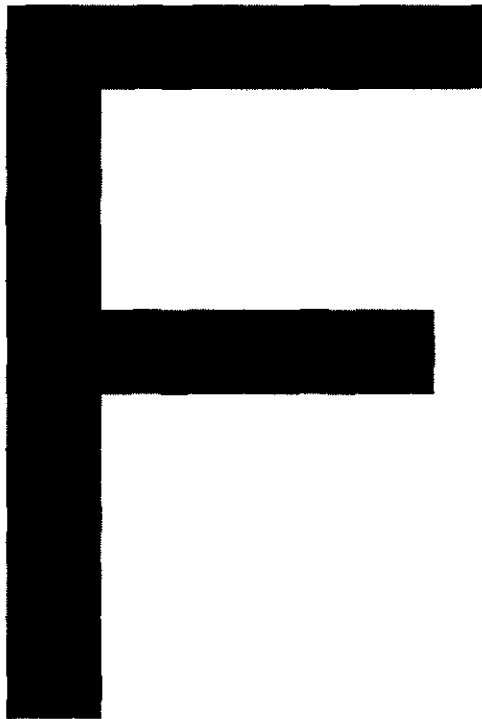


EXHIBIT F

From: Sharon Clayton [SClayton@mccglobal.com]

Sent: Wednesday, January 31, 2007 1:26 PM

To: david@bettymills.com

Subject: Re: 75ark/nichemusic settlement

I'm devastated by the email that tony just sent to me saying that he's called you to say we didn't get the wire out today. I am in the gulf dealing with a big paying client and tony and ken clearly told me I didn't have to worry about this that's they were going to make sure it happened. I am personally and professionally devastated having give you my word

What are the implications I want to help with anything I can do personally. I can't access any personal money due to my impending divorce settlement which has been very tough and very sad for me for a year negotiating it I can't touch any funds.

I want to reiterate that ken and tony assured me they wouldn't let you down. I am sick thinking about the impact for you What can I do?

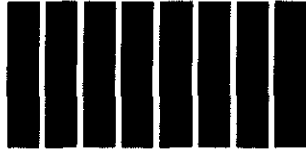


EXHIBIT G

G



EXHIBIT G

From: Sharon Clayton [SClayton@mccglobal.com]
Sent: Friday, February 02, 2007 11:58 AM
To: david@bettymills.com
Subject: Re: nichemusic settlement

Yes. It is only dependent as has been the case to date on getting the money we have in escrow freed up by the prospectus being approved

----- Original Message -----

From: David Schulhof <david@bettymills.com>
To: Sharon Clayton
Sent: Fri Feb 02 11:46:54 2007
Subject: RE: nichemusic settlement

The terms would be what I wrote in the last email and you said you would pay-

I just wanted to make 100% sure you will be pay the loan and fee back-

Again

25k fee on top of what's borrowed- so \$87,500 plus \$25,000 for 60 days loan.

5k per month penalty after 60 days

I don't want to do this deal- but its better then not having this settlement and us paying many times more later-

I only want to do this loan if you can pay it and the fee within the 60days – 100% for sure.

Please let me know

Also, I am still working on it- so other options are still needed in case this doesn't work-

I just found out I can't pledge my stock in the LLC Betty Mills due to the operating agreement, so the person lending me the money might now want to anymore

But in case I can, please confirm you are accepting this charge and can pay.

Or other options would be better

Thanks

David

From: Sharon Clayton [<mailto:SCLayton@mccglobal.com>]
Sent: Friday, February 02, 2007 11:31 AM
To: david@bettymills.com
Subject: Re: nichemusic settlement

What is the interest charge

----- Original Message -----

From: David Schulhof <david@bettymills.com>
To: Sharon Clayton
Sent: Fri Feb 02 10:57:28 2007
Subject: RE: nichemusic settlement

Is it 100% on the time frame- I don't want to loose my house and stock in Betty Mills.

60 days this would need to be paid back- and it's very expensive-

Can you 100% commit to paying it by the 60 days?

- I would not be able to-

Thanks

DS

From: Sharon Clayton [<mailto:SCLayton@mccglobal.com>]
Sent: Friday, February 02, 2007 10:25 AM
To: david@bettymills.com
Subject: Re: nichemusic settlement

Oh my gosh!!! I will back you up and I will pay the charge. I'm almost finished with my very sad very horrible divorce and will soon be able to help personally. This is good news, David, thank you.

----- Original Message -----

From: David Schulhof <david@bettymills.com>
To: Sharon Clayton
Sent: Fri Feb 02 10 22 19 2007
Subject: RE: nichemusic settlement

I reached out to a business associate who can borrow the money on my behalf with a ton a security from me and a very high charge-

This is a an extreme solution in an extreme situation-

He would wire the settlement money for the following terms:

60 days loan- fee would be \$25,000 for the \$87,522 amount borrowed for 60 days, plus \$5,000 per 30days over the 60 days term.

I would be signing my house and all my stock in Betty Mills as security- so very much security

I don't think this is a good deal, and it's a lot to have to pay, but its A LOT less then we will pay if this settlement does not close.

I also need to call the lawyer soon, and will need to advise

Please let me know what you think I should do

Regards,

David Schulhof

From: Sharon Clayton [mailto:SClayton@mccglobal.com]
Sent: Friday, February 02, 2007 8 39 AM
To: david@bettymills.com
Subject: Re: nichemusic settlement

I'm praying too my friend and going to do something

----- Original Message -----

From: David S Schulhof <david@bettymills.com>
To: Sharon Clayton
Sent: Fri Feb 02 07 30 39 2007

Subject Re: nichemusic settlement

If we can have the money there by Monday we could hold this together until then,
Going to keep lawyer on plan until I hear otherwise from you.
Praying for this to happen

-----Original Message-----

From: "Sharon Clayton" <SClayton@mccglobal.com>
Date: Fri, 2 Feb 2007 02:09:24
To: <david@bettymills.com>
Subject: Re: nichemusic settlement

I will call you as soon as I hear from a guy in houston.

----- Original Message -----

From: David Schulhof <david@bettymills.com>
To: Sharon Clayton
Sent: Thu Feb 01 09:42:59 2007
Subject: nichemusic settlement

I am reachable by cell phone 650 200 5838 except for when I will be flying home from 1-5 30 Pacific Time

Have spoken to Tony and Ken, but they give me no hope of payment in time to matter.

Tony suggested conf call with lawyer and I am working on coordinating a time for everyone- but it won't really help because we are where we are

We either have to pay the settlement by Friday, possibly Monday AM, or if we can't we default and that's that No Settlement and a lot more expense

The judge will rule against us by Friday or Monday

I would need to tell the lawyer an update before call with Tony- and if I tell him we can't pay settlement, he will stop working towards it and the settlement will fall apart

Please email me what you suggest. I want to check in with you before talking to lawyer again, but if we aren't going to pay, I need to tell him sooner than later, and it's later now

I really don't have a solution for this and I can't tell you how stressed I have been and am. Hope I can hear from you again today

I cut and pasted this from an email from our lawyer yesterday in regards to him bring pressure on the plaintiff counsel to finalize settlements by way of the judge. He ended with.

"thank you as long as I have the cash in hand, the judge will be on our side god forbid we don't".



EXHIBIT

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EXHIBIT

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From: David Schulhof [mailto:david@bettymills.com]

Sent: Mon 2/5/2007 7:15 AM

To: Sharon Clayton; Tony Moore

Subject: nichemusic-

I have not been able to arrange to borrow the money as of Friday or this weekend, and it has to be in NYC VERY VERY SOON.

I got your text message while writing this- and tried phoning you back.

Here is lawyer's cell phone. 212-682-8811 Feel free to call.

His name is Ray- feel free for you and Tony to call him. If you want, you can conference me in at 650 200 5838 when you do. I haven't been able to get times to arrange a call with you and Tony both so this is easier. You can call him without me.

The person I had or have to loan money would be making the loan and looking to me personally to pay it back. Anyone I went to would need for me to pay it back. I am planning on keep trying, but there is no guarantee I will be able to pay it back.

I have a loan shark type I can borrow from maybe, he will charge loan shark type rates, if I don't pay him back, he will own me. This is one of my options, to pay 10% a month or more and take ever more serious risks.

I spoke to a local attorney I had been speaking with about Bankruptcy (from a while ago he helped niche with other lawsuit) and this would offer me some level of protection against my exposure. It won't be 100% solution for me, I would still have major issues, but it might help me. So, I would like to take this step ASAP, and get this protection in place for me. This isn't going to settle and it's the only way to not have more coming at me.

Let me know if you have ideas.

Regards,
David Schulhof

From: "Sharon Clayton" <SClayton@mccglobal.com>
Date: Tue, 6 Feb 2007 00:50:16
To: "David Schulhof" <david@bettymills.com>, "Tony Moore"
<TMoore@mccglobal.com>
Subject: RE: nichemusic-

if you can borrow it as you noted previously, tony and i will back you up to ensure that they don't take you personally--i think that's the best bet--i think tony was giving 30 days so that we didn't disappoint you again because we are praying that the regulators will do as they say this time and it will be 10 working days at most (unless tony, you have heard something since monday's call that tells you differently).

we just have no cash because we've used it all for mcc given that it's taken more than 28 weeks to get our listing done and we've had the money we've raised tied up in escrow because of the delay--that's the issue.

tell us what we need to do to back this repayment--even if it's a loan shark deal!

from sharon

From: Tony Moore [mailto:TMoore@mccglobal.com]

Sent: Tuesday, February 06, 2007 7:21 AM

To: david@bettymills.com; Sharon Clayton

Subject: Re: nichemusic-

David, I am sorry but we are not in a position to help. We have no access to cash at this time. We have offered guarantees, pledging of shares that we own (your lawyer has advised against going this route) and told him and you that we should be in a position to do something by the end of this month.

I do not know what else to tell you. I suggest that you consult your lawyer and take it from there. We'll be very happy to talk to whomsoever you want us to but we just don't have any money for this and can't get it elsewhere as we have tapped all sources for our own company's needs.

I am very sorry that we can't do more.

Best wishes,

TM



EXHIBIT

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EXHIBIT

K

From: David Schulhof <david@bettymills.com>
To: Sharon Clayton; Tony Moore
Sent: Tue Feb 06 13:30:50 2007
Subject: RE: nichemusic-

I had a very, very lucky break today and two different sources offered to come through to make this happen, I took the cheaper one.

All I did was buy some time-

Just so you know, I have been calling people since yesterday at 6am to work on getting this, talk about humility. I reached way down to the bottom of barrel in my calls.

Anyway, please keep me up to date on your progress. This has been one of the most stressful experiences for me, hopefully close to finishing.

I borrowed 75k at 20% fee for 60days- 15k total cost for the 60days, - there is no discount for paying sooner, but the other guy wanted 25k for one month.

I had to put a lien on my house as collateral, as well as other promises.

The balance I was able to cash advance on my credit cards for the additional 10k that was needed (2k came from niche) so \$87,000 total

I can provide what ever back up as necessary when time comes. . I appreciate all the contact with both of you during the last few days.

I feel like I drove off a cliff and am still here

Regards,

David Schulhof

From: Tony Moore [mailto:TMoore@mccglobal.com]

Sent: Tuesday, February 06, 2007 1:41 PM

To: david@bettymills.com; Sharon Clayton

Subject: Re: nichemusic-

Bravo David. I can assure you we've been there and know how it feels.

The 60 days in obviously very helpful.

Let us fix our own situation and then we'll talk about how to unravel yours.

I applaud your tenacity and courage!

Best regards,

TM

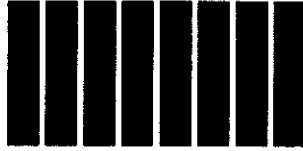


EXHIBIT M

M



EXHIBIT M

From: Sharon Clayton [mailto:SClayton@mccglobal.com]

Sent: Thursday, February 08, 2007 7:38 AM

To: Tony Moore; david@bettymills.com

Subject: RE: nichemusic-

we promise to make it up to you--we adore you and will do everything we can--always--we had our hands tied bigtime with a listing that has now taken almost a year--which is nuts at best!